IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL (LOD) NO.714 OF 2005

The Commissioner of Income-tax-1,
Kendrya Rajaswa Bhawan, 2nd floor,
Gadkari Chowk, Old Agra Road,
Nashik - 2. ..Appellant.

V/s.

Niphad Sahakari Sakhar Karkhana
Ltd. Bhausaheb Nagar, Tal.
Niphad, Dist. Nashik. ..Respondent.

Mr.B.M.Chatterjee with Mrs.P.P.Bhosale for appellant.

Mr.S.N.Inamdar with A.K.Jasani for respondent.

CORAM : F.I.REBELLO AND
J.P.DEVADHAR, JJ.

DATED : 17TH SEPTEMBER, 2007.

ORAL JUDGMENT (PER J.P.DEVADHAR, J.)

1. Matter not on board. Appeal is taken up for admission by consent of parties.

2. This appeal is filed by Commissioner of Income Tax under section 260 A of the Income Tax Act, 1961 against the order of the ITAT dated 2/12/2004 relating to the assessment year 1992-93.

3. Appeal is admitted on the following questions of law:-

1. Whether the Appellate Tribunal was right in law in holding that provisions of Section 40A(2) (a) are not applicable to a co-operative Society ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the additional payment over and above the statutory minimum price (SMP) was cane price and not diversion of profit and as such allowable as business expenditure under section 37(1) of the Income Tax Act, 1961 ?

3. Whether on the facts and in the circumstances of the case cane price / Khodki charges paid by the assessee was not "Bonus" within the meaning of 2(4) of the Maharashtra Co-op. Societies Act, 1960 and it was allowable as business expenditure ?

4. Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that Bakshish (reward) paid to harvesting and transport contractors, labourers is expenditure incurred by assessee on account of commercial expediency more so when no evidence is furnished in respect of such expenses ?

4. Counsel on both the sides agree that the first three questions of law are covered by the decision of this Court in the case of C.I.T. V/s. Manjara Shetkari Sahakari Sakhar Karkhana Ltd. in Income Tax Appeal No.318 of 2007 decided on 14th August, 2007 in favour of the assessee and against the revenue.

5. As regards the question No.4 is concerned, counsel on both the sides agree that the said question is answered against the revenue and in favour of the assessee by the decision of this Court in the case of Commissioner of Income Tax V/s. Samarth Sahakari

Sakhar Karkhana Ltd. in Income Tax Appeal No. 273 of 2007 decided on 17th September, 2007. Accordingly, all the questions are answered in favour of the assessee and against the revenue.

6. Appeal disposed of accordingly with no order as to costs.

(F.I.REBELLO, J.)

(J.P.DEVADHAR, J.)